

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

Houston, Texas

RANCO INDUSTRIES, INC.

Employer

and

Case No. 16-RC-10204

TEAMSTERS LOCAL UNION NO. 988

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:1/

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.2/
3. The labor organization involved claims to represent certain employees of the Employer.3/
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.4/

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All shop/warehouse employees, drivers and plant clericals employed by the Employer at its Houston, Texas Plant.

EXCLUDED: All office clericals, sales, watchmen and supervisors as defined by the Act.

DIRECTION OF ELECTION⁵/

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the [Teamsters Local Union 988](#).

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list containing the full names and addresses of all eligible voters which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); and *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the NLRB Region 16 Resident Office, Mickey Leland Federal Building, Suite 1545, 1919 Smith Street, Houston, Texas 77002, on or before May 12, 2000. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by May 19, 2000.

DATED May 5, 2000, at Fort Worth, Texas.

/s/ Martha Kinard
Martha Kinard, Acting Regional Director
NLRB Region 16

-
1. The Employer and the Petitioner [filed briefs](#) which were duly considered.
 2. The parties stipulated, and I find, that Ranco Industries, Inc. is a Texas corporation, with a place of business located at Houston, Texas, where it is engaged as a distributor of floor mats. During the past 12 months, a representative period, the Employer, in the course and conduct of its business operations, sold and shipped products and goods valued in excess of \$50,000 to points located directly outside the State of Texas.
 3. The [parties stipulated](#), and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
 4. By its petition in this matter, the [Petitioner](#) originally sought to represent a unit including shop, warehouse and driver employees and excluding clerical, sales and supervisors. During the hearing, the Petitioner amended the Petition to include all shop/warehouse employees and drivers employed by the Employer at its Houston, Texas facility and to exclude all clerical, sales, watchmen and supervisors as defined in the Act. The Employer takes the position that the unit sought by the Petitioner is inappropriate and urges that the unit must include two clerical employees and exclude a driver which it asserts was recently promoted to the position of Plant Foreman. The Employer asserts that its Plant Foreman is a supervisor as defined in Section 2(11) the Act and must be excluded from any unit found appropriate herein. There are approximately 10 employees in the unit petitioned-for, excluding the two clerical employees.

The record reflects that the [facility involved](#) in this proceeding is located at Houston, Texas. Included on this site is a warehouse where ten (10) shop/warehouse employees work and an office within this warehouse where two (2) clerical employees work. The record reflects that the parties include within the ten identified shop/warehouse employees an employee who also performs driving responsibilities. The Employer is in the business of receiving, cutting and delivering chair and anti-fatigue mats to its customers within and outside the State of Texas. The Employer's operations are headed by its President, Randy Brock Allen, who is responsible for running the Employer's business. Allen works in both the office area of the Employer's facility and at a desk in the shop/warehouse area.

The shop/warehouse employees are divided into two departments: Chair Mat and Anti-fatigue. The Chair Mat Department is comprised of one (1) employee who is responsible for cutting plastic chair mats pursuant to customer orders and then packing the product for shipment to the customer. The Anti-fatigue Department includes nine (9) employees. Seven (7) of the nine employees are primarily responsible for cutting and packing anti-fatigue mats pursuant to customer orders. One employee in the Anti-fatigue Department is solely responsible for packing customer orders. Among the nine employees in this department is a driver. The Employer's driver is responsible for delivering orders to the Employer's customers. The driver is also responsible for measuring and installing the Employer's products at customer locations. The record reflects that the Employer's

driver position has been occupied recently by more than one individual. The Employer's driver also works in the warehouse cutting and packing product.

As referenced above, the Employer's shop/warehouse employees' duties include stocking and receiving matting material, pulling customer orders, cutting matting material, and assisting in the packing of all customer orders. All shop/warehouse employees are scheduled to work from 8:00 a.m. through 5:00 p.m. These employees receive a pre-scheduled work break in the morning and another pre-scheduled work break in the afternoon. Their lunch break is from 12:00 p.m. through 1:00 p.m. The record reflects only occasional overtime work for shop/warehouse employees. All shop/warehouse employees are hourly paid and punch a time clock located in the shop. The record does not reflect the exact wage range for shop/warehouse employees, however, the highest paid shop/warehouse employee is paid \$10.00 per hour. If shop/warehouse employees bring their lunch, they must eat at their work area because the Employer's facility does not include a lunch or break room. The Employer's facility includes two restrooms (Men and Ladies) which are located on the shop floor.

With respect to the job benefits enjoyed by employees, the record reflects all shop/warehouse employees receive five days of vacation after completing one full year of employment with the Employer and one day for every year thereafter. The Employer does not have a defined sick leave policy. A determination as to whether a sick employee will be paid for an absence from work is made by the Employer's President on a case-by-case basis.

Clerical Employees

The Employer employs two clerical employees who report directly to the Employer's President. These two employees' duties are identical and primarily include processing customer orders transmitted to the Employer by facsimile. When an order is received, the clerical employees enter the order into the Employer's computer system. Clericals then check the stock balance reflected in the Employer's computer system. After the order is entered into the computer system, the order is printed. Clerical employees then walk to the shop floor and hand the order to the first shop/warehouseman encountered. At this point, the clerical employee and the shop/warehouse employee jointly perform a physical stock check to ensure that stock levels can accommodate the order. During the process of leaving the order with the shop/warehouse employee, the clerical employee and the shop/warehouse employee share information concerning a variety of matters relating to the customer's order, including stock levels, timeliness of pending orders, whether a pending order can be cut out of existing inventory, and what size of sheet a given order requires. If, after consultation between the clerical employee and the shop/warehouseman, it is determined an order cannot be filled, the clerical employee contacts the customer. Occasionally, one of the clerical employees will pull orders if the warehousemen are back-logged. One of the clerical employees does not pull orders because of an injured knee. The clerical employees average 10 to 20 trips from their office to the shop floor per day. Additionally, shop/warehouse employees sometimes go

into the office where the clerical employees work to discuss pending orders, stock levels, and problems with filling a customer's order.

Clerical employees also are primarily responsible for answering the Employer's telephone and have some payroll responsibilities. Their weekly payroll duties consist of one of the clerical employees walking to the shop floor where the time clock is located and retrieving all the shop/warehouse employees' time cards. The clerical employees use the time cards to calculate the regular and overtime hours, if any. After the clerical employees calculate each employee's pay, they prepare the Employer's payroll by entering the amounts into the computers and printing checks.

With respect to hours of work, the record reflects that the two clerical employees work the same hours as shop/warehouse employees, 8:00 a.m. to 5:00 p.m. Clerical employees take their lunch break commencing at 12:00 p.m., however, during lunch one clerical employee is required to stay in the office to answer the telephones. If a clerical brings her lunch, she must eat at her desk because the Employer does not provide a lunch or break room. Unlike shop/warehouse employees, clerical employees' breaks are not pre-scheduled.

Clerical employees are hourly paid, but are not required to punch a time clock or fill out a time slip. The Employer's two clericals are paid \$9.25 and \$12.00 per hour, respectively. Like shop/warehouse employees, clerical employees are eligible for five days of vacation after completing one full year of employment with the Employer and one day for every year thereafter. The Employer's sick leave policy for clericals is identical to the policy applied to shop/warehouse employees.

The Board has long relied on "community of interest" factors in determining whether separate groups of employees should be included in an appropriate unit for purposes of representation by a labor organization. *Swift & Co.*, 129 NLRB 1391 (1961). See also, *United States Steel Corp.*, 192 NLRB 58 (1971). Such factors include common supervision, nature of employee skills and functions, interchange of employees and contact among employees, work situs, general working conditions and fringe benefits. Also considered is the extent of the employer's organizational structure. *Kalamazoo Paper Box, Corp.*, 136 NLRB 134, 137 (1962); *International Paper Co.*, 96 NLRB 295, 298, fn. 7 (1951). None of these factors, individually, is determinative; all are weighed in deciding whether a sufficient community of interest exists so as to include separate, identifiable groups of employees in an appropriate unit. The Act, however, allows a union to petition for an appropriate unit, and does not require it seek the most appropriate unit, even when a different than petitioned-for unit might be more appropriate. *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950), enf'd. 190 F.2d 576 (7th Cir. 1951); *Omni-Dunfey Hotels, Inc.*, 283 NLRB 475 (1987); *Federal Electric Corp.*, 157 NLRB 1130, 1132 (1966); *Capital Bakers*, 168 NLRB 904, 905 (1967).

The record evidence established that the two clerical employees in this matter share a substantial community of interest with the shop/warehouse employees. The two classifications are functionally integrated in the production and delivery of customer

orders. Clerical employees work the same hours as the shop/warehouse employees and take essentially the same lunch breaks. Their pay is comparable to shop/warehouse employees. Clerical employees share common benefits and supervision with shop/warehouse employees. Furthermore, the record reflects that clerical employees regularly interact with the shop/warehouse employees on the shop floor or inside the clerical employees' office. Clerical employees perform tasks directly related to and integrated with the production and subsequent distribution of the Employer's product. Specifically, the clerical employees continually process customer orders by entering them into the Employer's computer system and delivering them to the shop floor after an inventory check has been performed. This function has been consistently found by the Board to be closely associated with production. See *Weyerhaeuser Co.*, 132 NLRB 84 (1961); *Jacob Ash Co.*, 224 NLRB 74 (1976); *Sears, Roebuck & Co.* 222 NLRB 476 (1976); *Western Gear Corp.*, 160 NLRB 272, 274 (1966). In addition, the two clerical employees maintain stock inventories, order supplies, and collect employee timecards. These are duties which are also typical of those performed by plant clerical workers. *Magna Corp.*, 261 NLRB 104 (1982). Moreover, the record reflects instances of a clerical employee assisting shop/warehouse employees in pulling orders which lends further support to a conclusion that the clericals in question are plant clericals rather than office clericals. See *T.E. Hamilton*, 270 NLRB 331 (1984).

In its brief, the Petitioner relies on *Rish Equipment Company, Inc.*, 257 NLRB 808 (1981) in support of its contention that the clerical employees in this matter do not share a sufficient community of interest with the shop/warehouse employees. In *Rish Equipment Company, Inc.*, supra, the Board found two clerical employees to be office clerical employees and sustained the challenges to their voting ballots. The clerical employees therein were located at the employer's main office which was separated from the Service and Parts Departments. The clerical employees operated a two-way radio and teletype machine, answered the telephone, received visitors, and ate lunch in a lunch room separate from where the parts and service department employees ate. Moreover, the clerical employees in *Rish Equipment* spent most of their time in the main office.

The facts in the instant case are clearly distinguishable from those in *Rish Equipment*. First, the clerical employees in the instant case do not use a two-way radio or teletype machine, do not receive visitors, and do not perform any billing. Furthermore, the record demonstrates that the clericals in the instant case, who are officed in close proximity to the shop floor, physically interact with shop/warehouse employees on the shop floor 10-20 times daily and work jointly with shop/warehouse employees in the processing of customer orders by sharing information regarding inventory availability and ship dates. The clerical employees also physically check stock levels with the shop/warehouse employees and on occasion pull orders.

Based on the foregoing factors, I find that the two clerical employees share a substantial community of interest with the shop/warehouse employees and will include them in the bargaining unit.

Plant Foreman

The Employer asserts that one of its employees, Paul Neyra, who prior to April 10, 2000, (the date the petition in this matter was filed) worked exclusively in the Chair Mat Department as a driver and installer, should be excluded from the unit because he is a supervisor as defined in Section 2(11) of the Act. The Chair Mat Department Driver in dispute here is a five-year employee. The Employer alleges that on April 10, 2000 it promoted this employee to the Plant Foreman position. In further support of its assertion that this employee is a statutory supervisor, the Employer contends that the employee in question has been a supervisor throughout his tenure because prior to April 10, 2000 he was the manager of the Chair Mat Department. In this position, the Employer contends he selected employees to help him with major deliveries and set up jobs, directed the work of these employees, and while on scheduled jobs, determined breaks and lunch hours for these employees. The Employer did not produce any evidence concerning the frequency of these jobs. The Employer further contends that on one occasion the employee recommended the hiring of an individual and the individual was subsequently hired without any further investigation. The record concerning this assertion is unclear and does not reflect the identity of the individual hired or the date he was hired.

The record reflects the Employer's contention that on April 10, 2000 the Employer's President met with Neyra early in the morning and promoted Neyra to Plant Foreman, replacing the former Plant Foreman, a five-month employee who was on vacation at the time. During the course of this meeting, the Employer's President allegedly provided Neyra a list of newly-assigned duties, outlined in Petitioner's Exhibit #1. This list of duties does not purport to confer upon Neyra any supervisory responsibilities. To the contrary, it directs Neyra on how to perform various duties and what employees to use for certain jobs. During the April 10 meeting the Employer's President also allegedly provided Neyra a one (1) dollar per hour pay increase (from \$9.00 to \$10.00 per hour) for the promotion to Plant Foreman. However, the record reflects all employees received a pay increase at this time. The Employer's former Plant Foreman, who had no prior work experience as a Plant Foreman, was paid \$13.00 per hour during his five-month tenure with the Employer. At the time of the hearing, Neyra was paid \$10.00 per hour.

There is no evidence the Employer's President told Neyra he was promoted to Plant Foreman, nor did he advise Neyra he now possessed the authority to hire, fire, transfer, suspend, reassign employees or possessed the authority to recommend any of these actions. Furthermore, the record reflects that the Employer's President did not tell any of its other employees or post any notice advising employees about the purported promotion.

Notwithstanding the Employer's contention regarding the supervisory status of its new Plant Foreman, the record reflects this employee continues, since his alleged April 10, 2000 promotion, to perform the same duties of delivering, installing and measuring mats for jobs. However, he only performs these duties three days a week. He spends the remaining time in the shop, assisting other employees in cutting mats and packing/loading. In sum, there is no evidence that the Employer's current Plant Foreman has directed the work of any employee, disciplined, hired or fired any employee, nor has

he effectively recommended the same. The only evidence of any recent change in his work duties concerns his new responsibility for packing products to be shipped from the Employer's facility.

The Employer cites one instance of what it purports to be an example of its Chair Mat Department driver effectively recommending the hiring of an employee. A close review of the record does not support the Employer's contention. While the Employer asserts Neyra effectively recommended the hiring of one employee, the Employer could not identify the employee hired or the date. Furthermore, the record reflects Neyra did not hire, transfer, suspend, layoff, recall, promote or discharge employees.

The Employer also contends that prior to the purported promotion to Plant Foreman on April 10, 2000, Neyra continually exercised independent judgement by directing the work of other employees while on job installations. The record reflects that Neyra measures, installs and delivers mats for the Employer. In the performance of these duties an assistant may be required depending on the amount of work required by a particular job. The record does not address the number of times that two employees were needed for the installation and delivery of jobs, nor did the Employer establish Neyra ever responsibly directed the work of other employees. Moreover, while the Employer further urges that Neyra selected which other employee would assist him on job installations, this assertion is inconsistent with record evidence reflecting that his newly-expanded duties in the Plant Foreman position do not give him such authority. In fact, as reflected in Petitioner's Exhibit 1, the Plant Foreman has no discretion in choosing which employees to use for job installations.

The burden of proof falls on the party asserting supervisory status. *Bennett Industries*, 313 NLRB 1363 (1994); *Bowne of Houston*, 280 NLRB 1222 (1986). The presence or absence of the exercise of independent judgment is an important factor weighed by the Board in making its supervisory determinations. *Sears, Roebuck & Co.*, 304 NLRB 193 (1991). The evidence herein is insufficient to find that Neyra possesses the authority to hire, fire, discipline, transfer, or effectively recommend any of these actions. Moreover, the record establishes that Neyra, who drives and works in the warehouse assisting other production employees, is hourly paid at a rate comparable to other shop/warehouse employees, and receives identical benefits to the other shop/warehouse employees shares a community of interest with the shop/warehouse employees. Based on the foregoing, I find Neyra is not a supervisor as defined in Section 2(11) of the Act and is properly included in the shop/warehouse unit.

In its brief, the Employer relies on *NLRB v. Brown Specialty Co.* 436 F2d 372, 375 (7th cir. 1971) and *NLRB v. Elliott Williams Co.*, 345 F2d 460, 463 (7th cir. 1975). in support of its contention that Neyra is a supervisor. With respect to this issue, the Employer's reliance on these cases is misplaced. In *Brown Specialty Co.*, supra, the court held that where an employee has no regular working hours, was the only person in his department that was on straight salary, is introduced to new hires who reported directly to him, exercised judgment, and recommended the hiring and rehiring of employees was a supervisor. Neyra, unlike the employee in *Brown Specialty Co.*, supra, has regular work hours, is an hourly employee, and is required to punch the Employer's time clock just as

all other shop/warehouse employees. Petitioner's Exhibit #1 clearly reflects that Neyra has no authority to decide which employee will assist on major jobs. Accordingly, the facts in this case are distinguishable from those in *Brown Specialty Co.* In *NLRB v. Elliott Williams Co.*, supra, the court noted that there was substantial evidence on the record as a whole that the employee in question in that matter was a supervisor because he had a separate work area with a desk and instructed and assigned work to employees and made hiring and firing recommendations. Unlike the employee in *Elliott Williams Co.*, supra, the record reflects that Neyra does not have a separate work area, does not have a desk, does not instruct or assign employees. Likewise, the record in this matter is void of even a single instance of Neyra firing, disciplining or otherwise independently directing the work of employee.

In sum, based on the above and the record as a whole, I find there is a sufficient community of interest to require the inclusion of the two clerical employees and Neyra in the unit sought by the Petitioner. I also find that the Employer has failed to establish that its Plant Foreman is a supervisor as defined in Section 2(11) of the Act. Based on my determination that he shares a community of interest with the Employer's other shop/warehouse employees, I will include him in the unit found appropriate here.

Finally, no consideration has been given herein to arguments made in the Employer's brief concerning alleged supervisory taint in the solicitation of union authorization cards. Such arguments are not appropriately raised or considered in initial representation case proceedings. *Times Square Stores Corp.*, 79 NLRB 361 (1948). See also *Texas Meat Packers*, 130 NLRB 279 (1961), *Cooper Supply Co.*, 120 NLRB 1023 (1958), and *Capitol Records*, 118 NLRB 598 (1957).

5. In accordance with Section 102.67 of the Board's Rules and Regulations, as amended, all parties are specifically advised that the Acting Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

177-8520
440-1760-2960